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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3636
FACSIMILE: 803-253-6283

July 10, 1989

C. Wade Cleveland, Esquire
Office of Legal Counsel
The School District of
Greenville County
301 Camperdown Way - Box 2848
Greenville, SC 29602

Dear Wade:

As Attorney for the School District of Greenville County, you have requested the Opinion of this Office as to a number of questions concerning Act R263, Acts and Joint Resolutions of South Carolina, 1989, concerning operating school tax millage for that school district. I have grouped your questions as to related issues and addressed them separately below.

Several of your questions relate to whether §§2, 3, 4 and 7 of the Act must all be approved in a referendum before those provisions in the Act become effective. The key provisions appear to be the following parts of §5 of the Act:

"Before the provisions of §§2, 3, 4 and 7 of this Act may take effect, the qualified electors...must first approve of its provisions in a referendum....If multiple questions are used, each must receive approval for any of the provisions of §§2, 3, 4 and 7 of this Act to be considered approved and for this purpose the provisions of §§2, 3, 4 and 7 of this Act are declared to be non-severable." (emphasis added)

"The primary function in interpreting a statute is to ascertain the intention of the Legislature." South Carolina Department of Highways and Public Transportation v. Dickinson, 341 S.E. 2d 134 (S.C. 1986). Here, that §5 does not distinguish among §§2, 3, 4 and 7 as to which section must be approved, that multiple questions, if used, must all be approved and that these sections are declared non-severable indicates that all of these sections must be approved for any of them to be effective. Although §2 is the only section that specifically states those matters which must be approved in a referendum, §§3, 4, and 7 all address either the manner of holding the referendum or the consequences of provisions implemented by the referendum. Because of this interrelationship among the sections, and because of the language of §5 that has already been discussed, the intent of the Legislature appears to be that all parts of §§2, 3, 4, and 7 must be submitted to the voters in a referendum and that they must all be approved in order for any of them to be effective. This conclusion would not appear to be controlled by the framing of the questions on the ballot by the Board under §5. As to the form of ballot when questions are submitted, see §7-13-400 of the Code of Laws of South Carolina, (1976).

You have also asked whether the school district must call the referendum on November 7, 1989, as provided in §5. The use of mandatory language in that section and the absence of other authority therein indicates that that date is the only date on which the referendum may be held. Sutherland Statutory Construction, Vol. 2A §57.03.


You have also asked whether the school district's authority to conduct a referendum under Act 215 of 1965 and Act 1349 of 1968 would still exist after the approval of the provisions of Act R263 of 1989 in a referendum. Although the general rule of statutory construction is that statutes on the same subject are to be construed together with effect given to both in the absence of an express repeal or an irreconcilable conflict, the Legislative intent in Act R263 of 1989 appears to be for provisions of that Act, if approved, to be controlling with respect to increases in school tax millage in Greenville County for operational purposes. See Sutherland Statutory Construction Vol. 2A §51.02. The district would not have any authority to conduct referenda for operating tax millage other than as exists by statute. See §4-9-70 of the Code and Ops. Atty. Gen. (December 7, 1987). I am aware of no other statutory provisions for referenda other than the general provisions of § 59-73-10, et seq., which are of doubtful constitutionality and which also would probably be controlled by R263 under the above authority. Ops. Atty. Gen. (October 22, 1980).

Finally, you have asked for the meaning of §§3A and 3B. As to §3A, I am enclosing a copy of a previous Opinion concerning the effect of reassessment on school tax millage. Ops. Atty. Gen. (March 14, 1989). If you need additional guidance, I suggest that you check with the South Carolina Tax Commission. As to §3B, under the above rules of statutory construction concerning the intent of the legislature, §3B indicates that excess millage approved in a referendum constitutes the millage for that year which is then used as a basis for determining limitations on increases in future tax years. Although the reference in §3B is to the "excess millage" rather than to the existing millage plus the excess, the intent of the Legislature appears to be to reference the millage for a particular tax year as increased by the approved "excess millage". See Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).

In conclusion, the intent of the Legislature appears to be that §§2, 3, 5 and 7 of Act R263 of 1989 will not be operative unless all of those sections are approved in a referendum conducted on November 7, 1989. If approved, these provisions appear to be controlling as to referenda for increases in millage in the Greenville County School District. The provisions of §3A and §3B are discussed above. I understand that you concur with these conclusions.

If you have any questions, please let me know.


Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps
Enclosures

REVIEWED AND APPROVED BY:


Joseph D. Shine
Chief Deputy Attorney General


Robert D. Cook
Executive Assistant for Opinions